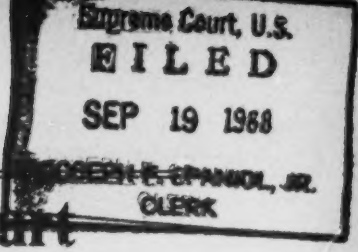
(2)

88-425

No.



In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

ROBERT A. LEVY,
Petitioner,

VS.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,
UNIVERSITY OF CALIFORNIA, DAVIS,
UNIVERSITY OF CALIFORNIA, BERKELEY,
PROFESSOR DOUGLAS MCCOLM,
PROFESSOR WILLIAM KNOX,
EDWARD J. BLAKELY,
PROFESSOR JACK M. HOLLANDER,
in their individual and official capacities,
and DOES I-XXX,
Respondents.

On Writ of Certiorari to the Court of Appeal of the State of California First Appellate District, Division Three

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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(Counsel of Record)
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QUESTION PRESENTED

Did the Court of Appeal for the State of California correctly conclude that defendants are entitled to summary judgment on claims of age discrimination when a plaintiff does not make a prima facie showing of age discrimination and the defendants establish that they had legitimate, nondiscriminatory reasons for not hiring plaintiff.

PARTIES TO THE PROCEEDING

The only parties to this proceeding are petitioner, Dr. Robert A. Levy, and respondents, Regents of the University of California, the University of California, Davis, the University of California, Berkeley, Professor Douglas McColm, Professor William Knox, Edward J. Blakely, and Professor Jack M. Hollander.

Respondents know of no other entities within the meaning of Supreme Court Rule 28.1 that should be disclosed to enable the Honorable Justices of this Court to evaluate the possibility of recusal.

JURISDICTIONAL BASIS

Petitioner asserts jurisdiction under 28 U.S.C. Section 1257(3), but no conflict in the federal law or significant federal question is presented as required by Supreme Court Rule 17.1. On the contrary, petitioner has presented a question based exclusively on the unique facts of his case that was resolved below by well-settled law. That body of law is in no way undermined by the Court of Appeal's adherence to this well-established precedent in resolving this case against petitioner.

STATEMENT OF THE CASE

The pertinent facts are set forth in the opinion of the Court of Appeal at pages A1-A48 appended to the petition.

REASONS FOR DENYING THE WRIT

The petition should be denied. It presents no novel or significant question of federal law or any bona fide conflict in the decisions of the appellate courts. The petition does not raise any novel issues because, as the Court of Appeal's cogent analysis reveals, the result is here governed by well-settled principles that are easily drawn from the relevant cases. Petitioner does not show any conflict in the controlling law because, as the Court of Appeal's well-reasoned opinion also demonstrates, there is none. Finally, as the full factual recitation reflected in the Court of Appeal's opinion also shows, despite being given every opportunity to produce what evidence he had regarding the reasons underlying the respondents' decision not to hire him:

—Petitioner *did not* make a prima facie showing of age discrimination by respondents;

—The respondents established that they had legitimate, nondiscriminatory reasons for *not* hiring petitioner; and

—There is *no* competent evidence in the record that *any* employment decision made by respondents that affected petitioner was motivated by any form of discrimination

A fair recitation of the record here accordingly reveals that this case was dismissed under unambiguous and uniform law—not

because the Court of Appeal "misperceived the evidence" or because it made some "legal error" in its reasoning process—but because petitioner had no credible evidence to support his age discrimination claims, let alone raise any inference that the respondents' hiring of two other fully-qualified individuals was a pretext for discriminating against petitioner. *See, Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 259 (1981); *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 576 (1976); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-805 (1973). The Court of Appeal therefore followed an unbroken line of federal and state authority in summarily terminating this case. *Id.; e.g., Cotton v. City of Alameda*, 812 F.2d 1245, 1248-1249 (9th Cir. 1987); *Palmer v. United States*, 794 F.2d 534, 537 (9th Cir. 1986); *Gray v. New England Tel. and Tel. Co.*, 792 F.2d 251, 254-256 (1st Cir. 1986); *Foster v. Arcata Associates, Inc.*, 772 F.2d 1453, 1459 (9th Cir. 1985); *Casillas v. United States Navy*, 735 F.2d 338, 344 (9th Cir. 1984); *Steckl v. Motorola, Inc.*, 703 F.2d 392, 393 (9th Cir. 1983); *Douglas v. Anderson*, 656 F.2d 528, 531, 534- 535 (9th Cir. 1981); *Tagupa v. Board of Directors*, 633 F.2d 1309, 1311-1312 (1980); *also see, Ibarbia v. Regents of University of California*, 191 Cal.App.3d 1318, 1328-1329 (1987).

As both the trial and appellate courts correctly held, petitioner's unsupported intonations of "age discrimination" cannot survive summary judgment. While petitioner seeks to reargue his case for yet another time before this Court, this Court does not sit simply to resolve disputes between the litigants before it. *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74 (1955). The petition should accordingly be denied.

Dated: September 16, 1988

Respectfully submitted,

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By PETER W. DAVIS
Counsel of Record for Respondents